(1) Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

Drake Oil Technology Partners, FRANK E. ACIERNO, *et al.*,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The parties are the Internal Revenue Service (hereinafter called "I.R.S.") and numerous taxpayer partners (hereinafter called "Taxpayers"). 26 U.S.C. § 6221 *et seq.* (hereinafter called Internal Revenue Code or "*Code*") provides certain partnership taxation procedures for TEFRA (referring to the Tax Equity and Fiscal Responsibilities Act of 1982) partnerships. Prior to enactment of TEFRA, partnerships, irrespective of size were treated as aggregates of individuals, rather than entities. All pre TEFRA notices were required to be given to individual partners, each of whom might litigate a partnership tax issue. TEFRA does not tax partnerships. Rather, TEFRA provides procedures to treat "larger" partnerships as entities for notice and other tax litigation purposes. *Code* § 6224(c)(2) provides:

> Other Partners have right to enter into consistent agreements — If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement.

The issue presented is as follows: Where I.R.S. settles a tax case with one partner on a partnership issue but fails, contrary to statute, to notify other partners of that settlement, does the subsequent taking of the aggrieved non settling (and unnotified) taxpayers' property in the form of tax collections amount to a prohibited taking of property without due process in contravention of the Fifth Amendment to the U.S. Constitution?

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioners are individual limited partners and their TEFRA limited partnerships. The total number of parties in this case amounts to nearly 7,500. The extended caption to the April 14, 2000, Tenth Circuit decision (Appendix A) is contained in full at Appendix E. Those of such parties who have not joined in this Petition are being served as Respondents.

The Respondent is the Commissioner of Internal Revenue.

Corporations and Limited Partnerships that are contained in the group of Petitioners are independent entities but have contract affiliation to the Elektra Hemisphere Licensing Corporation, a central promoter. None of these entities are owned or controlled or have 10% or more of their equities owned or controlled by a public company.

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Petitioners respectfully Petition for a Writ of Certiorari to review the judgement of the Tenth Circuit Court of Appeals in this case.

OPINIONS BELOW

The Tenth Circuit Court of Appeals order, (Appendix A) is reported at *Tucek v. Commissioner*. The Tenth Circuit Court of Appeals opinion, (Appendix B) is reported at *Vulcan v. Commissioner*. The U.S. Tax Court Decision, (Appendix C), *Vulcan Oil Technology Partners v. Commissioner*, 110 T.C. 153 (1998); and (Appendix D), *Estate of Campion v. Commissioner*, 110 T.C. 165 (1998).

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The filing is timely within 90 days after the filing of the order by the Tenth Circuit Court of Appeals recited at Appendix A. This Opinion was filed on April 14, 2000.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case focuses on the TEFRA statute regarding settlement of TEFRA Partnership cases with Tax aspects. This is 26 U.S.C.A. § 6224(c)(2) as follows:

6224(c)(2):

Other partners have right to enter into consistent agreements. If the Secretary enters into a settlement agreement with any partner with

> respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement.

The Fifth Amendment to the U.S. Constitution prohibits the taking of property without due process and I.R.S.' failure to provide equal protection control the disposition of this case. I.R.S. violated its duty to notify the discriminated against Taxpayer partners under *Code* § 6224(c)(2) regarding the more favorable tax settlements of other partners. Such failure violates the Fifth Amendment rights of these Taxpayers to due process and equal protection of the laws by this super government agency, namely the I.R.S.

STATEMENT OF THE CASE

Petitioners are limited partners in the Denver Group of limited partnerships in the Elektra Hemisphere Project. There are 53 total partnerships with 7,500 partners. There also are the Manhattan Group and the Witchita Group. All of the 53 partnerships are judicially decreed by the U.S. Tax Court to be bound to the decisions of the lead cases. There are no material or substantial differences for tax purposes between and among those entities. The Denver Group consists of about seven entities, 1200 units, and 800 partners, out of 7,500 partners total in the project.

All of the 53 partnerships are engaged in the oil and gas technology business as sponsored by a common promoter. Partners paid in cash and at-risk notes. They took deductions in excess of their cash contributed. I.R.S. disallowed all deductions to all partners. Litigation followed in U.S. Tax

Court where the lead cases were decided in favor of I.R.S. These cases are *Krause v. Commissioner*, 99 T.C. 132 (1992), *aff'd sub nom., Hildebrand v. Commissioner*, 28 F.3d 1024 (10th Cir. 1994), cert. denied.

The Denver Group was bound to these lead cases in the case of *Acierno v. Commissioner*, T.C. Memo 1997-441. The others were bound in *Karlsson v. Commissioner*, T.C. Memo 1997-32; and *Vanderschraff v. Commissioner*, T.C. Memo 1997-306.

I.R.S. conducted settlement campaigns during the pendency of these lead cases. During 1986 through 1988, it accepted at least 104 "cash out," (full credit for cash invested and no penalty), settlements. Notices of these settlements were not forwarded to the Ogden Service Center for TEFRA processing until 1994. The record reveals I.R.S. knew it was required to comply with I.R.C. 6224(c)(2), but it did not do so. I.R.S. cannot show it gave notice of the "cash out" settlements to anyone. Accordingly, all other partners (The Taxpayers herein) were unaware of the favorable "cash out" settlements given to selected partners. I.R.S.' failure to give notice as clearly required by statute deprives these Taxpayers of due process before the taking of their property in the form of taxes and violates their Constitutional rights to equal protection of the laws.

The I.R.S. Regional Service Centers failed to send notice of copies of the "cash out" settlement agreements to Ogden so no notices thereof were sent to these Taxpayers. After the lead cases were decided, I.R.S. again campaigned for settlements based on the decided cases, but this time with terms substantially less favorable to the Taxpayers than "cash out" settlements. (*See Hildebrand & Krause*). It was only at

that time the prior settled partners personally brought their more favorable settlements to the attention of the Taxpayers, thus uncovering the 6 year hiatus between when I.R.S. settled those cases and when these Taxpayers first knew of the more favorable settlements.

Code § 6224(c)(2) cannot operate until and unless I.R.S. first sends notice to apprise Taxpayers of a partnership settlement in which they can participate. I.R.S. does not attack the law involved, but takes the untenable position that it has no duty to notify all partners of its settlements with other identically situated partners notwithstanding the plain language of *Code* § 6224(c)(2).

The Tax Court failed to find that all notices were sent or that no notices were sent. It recited what the Ogden Service Center testified (through the head of its TEFRA unit) was its plan, i.e. As settlement agreements were finalized, personnel in Respondents (I.R.S.'), Ogden Service Center, which was the key case Service Center for the Denver based Elektra Hemisphere tax shelter partnerships, generally mailed copies of the final agreements to the tax matters partner of each partnership. (See Appendix A, p. 9). This statement neglects to state that there was a 6 year hiatus between the favorable settlements and the referenced notification. I.R.S. takes the position that it withdrew its favorable "cash out" offer in the meantime. Further, I.R.S. abjectly fails to address the numerous unnoticed settlements, the existence of which is clear in the record.

Nevertheless, the Tenth Circuit focused on this and similar vagaries in the Tax Court opinions to state that: "The Tax Court found that Vulcan Oil Partners had presented no evidence that the I.R.S. had improperly failed to notify

its partners through their TMP's (Tax Matters Partner) of the earlier, more favorable settlements, pursuant to *Code*, 26 U.S.C. Section 6223(a)". *Vulcan* 110 TC at 151. It then concluded that the duty to notify partners rested solely on the TMP, citing *Code* Section 6223(g), a *Code* section which applies only to Notices of Final Partnership Administrative Adjustments and does not bear on or even relate to the issue of settlement notification under § 6224(c)(2).

The Tax Court and Tenth Circuit assumed that the burden of proof to establish that the required mailings were sent by I.R.S. is on the Taxpayers. *Code* § 6212 makes clear that I.R.S. shall send any notice of deficiency to the taxpayer at his last known address by registered or certified mail. Such notice is elementary to procedural due process and is Constitutionally required. The case of a TEFRA partnership is the same so far as I.R.S.' requirement to give notice goes. Otherwise, there can be no due process and no equal protection because notice is the elemental ingredient to due process i.e. notice and opportunity to be heard and equal protection. I.R.S. has failed to carry its burden to establish that it sent notices to the relevant partners as required by law, namely *Code* § 6224(c)(2).

I.R.S. operates under a Manual of operation called the Internal Revenue Manual (The IRM) which controls its operation so as to insure consistent treatment under the tax laws for identically situated taxpayers. The IRM required I.R.S. agents to notify other partners of finalized settlements so they might utilize *Code* Section 6224(c)(2). The courts below held that this IRM provision did not contain any Constitutional level protection for investors in TEFRA partnerships. The I.R.S. takes the pernicious position that it had no duty to give any notice whatsoever to anybody. This

result is both logically flawed and constitutionally impermissible. Only I.R.S. is party to all settlements. A TMP is not involved until he receives notice from the I.R.S.. If the TMP never receives notice, he can't pass any information about settlements on to his partners. I.R.S.' attempt to thrust its nondelegable notice responsibility upon an otherwise ignorant TMP is akin to blaming a hurricane on falling trees. The TMP is a conduit for information only not a generator. Without notice, the TMP is unable to take any action.

The Constitutional level of administrative duty has not been addressed in this case because the lower courts have simply held there was no duty. There are no cases available on this issue. Taxpayers assert that there are many analogous situations where notice is required to be sent by the I.R.S. *See Keado v. United States*, 853 F.2d 1209 (5th Cir. 1998), at p. 1212, "Proof of Mailing". Here the true standard for I.R.S. proof of mailings is described at length.

Lastly, the lower courts inflict both insult and injury upon these Taxpayers by suggesting that they failed to accept the pre-lead-case-trial-offer then lost in court, and that accordingly they are sore losers. Such a position has a false premise and reached an equally false tautological result. Because the Taxpayers were never notified of any cash out settlements, they could not have failed to accepted same. In fact, the Denver Group was excluded from the lead case. When they discovered in 1995 that there was a prior more favorable settlement, they quickly requested it and were promptly denied it.

In the case of *United States v. Caceres*, 440 U.S. 752, 99 S. Ct. 1465 (1979), this Court refused to allow a wiretap victim to quash the tape in a criminal case because an I.R.S.

Manual provision was neglected by I.R.S. I.R.S. failed to obtain pre-approval from District Counsel for the I.R.S., which approvals are routine. The U.S. Tax Court felt *Caceres id.* was controlling in interpreting *Code* § 6224(c)(2) for the purpose of holding that there was no duty for I.R.S. to notify anybody, because the IRM was not statutory. In fact, the *Caceres* Court held that while not every IRM violation gave the Taxpayer legal rights to redress, in some cases, such a violation could. What better opportunity might there be than a case where failure to observe the IRM results in Constitution deprivation of procedural due process and equal protection? *See Vulcan*, Appendix A.

Petitioners simply cannot tolerate this. TEFRA only works in an atmosphere of candor, disclosure, and honesty. Hiding the ball for 6 years is contrary to the intent of Congress in adopting TEFRA. Waiting for the Tax Court Rule 248(c) to become effective in 1988 is not enough. The damage was done before then. Only an order of court herein that identifies the importance to this procedure declares the burden of proof on the Service, and forces compliance currently is adequate. In the case of *Fisher v. Commissioner*, T.C. MEMO, 1994-434, the tax court required the Service to re-notice all investors in the project, allowing each 60 days to elect the prior more favorable settlement, (whether or not they were open, settled, or decisioned). This remedy is requested in this case. The prior "global offers" and their acceptances must be noticed anew to the 7,500 partners in 53 TEFRA Partnerships.

In *United States v. McKee*, 192 F.3d 535 (C.C.A.-6, 1999) the Court of Appeals acknowledged that the *Caceres* rule is not a *per se* rule against reliance on the I.R.S. Manual. It recites that "several circuits adhere to the view that a

conviction may be overturned if the I.R.S. is found to have violated a provision of its manual 'designed to protect the constitutional rights of taxpayers'." (Citing 3 cases in other circuits).

REASONS FOR GRANTING THE WRIT

I.

REGULATION

Here the I.R.S. had its way with the investors. The purpose of the TEFRA statute as to encouraging settlements has been thwarted. I.R.S. failed to produced any evidence that compliant notices of settlements as accepted were ever sent to anybody. The lower courts have somehow skirted the central issues, decreed a total lack of duty, and scolded Petitioners for not proving a negative.

This court has an opportunity in this case to review a record, which is clear on its face as to a taking property without due process and equal protection in violation of the Fifth Amendment to the U.S. Constitution. This Court is the last chance Taxpayers have to insure that I.R.S., the government's most powerful agency, abides by law. A decision to grant Certiorari will enhance voluntary compliance by all taxpayers since it will demonstrate that there is elemental fairness and due process in connection with tax collection. What occurred here simply compromises the tax collections system and gives cynics even more grist for their mill.

II.

CONSTITUTIONAL IMPORTANCE

The lower courts placed no importance on the asserted duty of the Service to give notice of finalized settlements to the TMP. Their announced reason was that I.R.S. Manual Provisions requiring notice are not legislation and are not constitutional level duties.

This begs the question of how important is it? Petitioners view TEFRA settlement procedures as extremely important because they are legally situated in a passive position. Until the Service starts the ball rolling with notice to somebody about the acceptance of a settlement offer, I.R.C. 6224(c)(2) means nothing. Nor could the TMP react by sending notice to limited partners, as required by I.R.C. 6223(g).

Now TC Rule 248(c) is adopted and much more clear rules of notice obtain. There is a 10-day provision for the I.R.S. to respond with notice to the TMP. Magically, this duty is said to appear for the first time when this rule became effective in September 1988. Petitioners assert that it already existed per force of 6224(c) itself and the rule merely codified the obvious. Furthermore, I.R.S. Regulations added a 60-day time limit for accepting such prior offers that were accepted by other partners. *See* 26 C.F.R. § 301 6224(c) – 3T. This puts a very quick decision making burden on the passive investors, thus making candor, disclosure, and cooperation by the I.R.S. ever more important.

These private placement, risk taking, and tax sensitive investors may not be needed in America at the moment. The stock market is up and real estate is wonderful. But that

could change very quickly. In the event America again needs risk capital to search for more oil or better technologies, shelters will become a logical sort of vehicle to obtain the needed money. If these investors are confronted forever with unfair precedent in our court system, America will suffer.

III.

NON-SEQUITUR REASONING

The Tenth Circuit has held that "nothing in the record leads us to believe the I.R.S. has breached its statutory or regulatory duties toward the appellants . . ." This is a non-sequitur because its holding in the text of the opinion is inapposite. It holds as a matter of law, as did the U.S. Tax Court, which was affirmed by it, as follows: (see Appendix A, p. 14)

> Under no statutory or regulatory provision, court rule, or other basis, was Respondent required to give movants herein notice of cash settlements that, during 1986 through 1988, were entered into between Respondent and investors in the Elektra Hemisphere tax shelters. Responsibility for providing notice to movants was with the TMP's of the various Elektra Hemisphere tax shelter partnerships.

Obviously there was no breach because there was no duty to be breached. This kind of double standard decision adds up to be a classic non-sequitur when some importance is attached to the I.R.C. 6224(c), and to the actual failures left unrebutted in the record.

IV.

CONFLICT AMONG CIRCUITS

The Circuit Courts of Appeal are divided on the issue of equitable tolling of Federal Statutes of Limitations. This is central to this case because I.R.C. 6224(c) has a 150-day limitations period after an F.P.A.A. is sent. Another 60-day limit is imposed by regulations. Since the prior settlements as made were unnoticed to anyone, Petitioners could not request consistent settlement. They asserted their right to consistent settlement promptly when they suspected the existence of these more favorable but unnoticed settlements, six years later. This rule of statutory construction is mentioned and it is contrasted to the rule of constitutional level of importance asserted by Petitioners.

"The rule in *Irwin*" is relied upon to avoid tolling of I.R.S. statutes in *Becton and Dickinson & Co. v. Wolchenhauer*, 24 F. Supp. 2d 375. That rule is interpreted to say, "Equitable tolling is not applicable to suits against the government." *Becton*, (D.N.J.-1998), *re* 26 U.S.C.A. §§ 6532(c) and 7426. This is the minority position among circuits.

In *Bailey v. West*, 160 F.3d 1360 (C.C.A. Fed. 1998) the majority rule was stated as the doctrine of equitable estoppel is available to toll federal statutes if it would be available to private parties in comparable suits, unless Congress specifically stated otherwise. In *George Knight & Co., Inc. v. Watson Hyatt & Co.*, 170 F.3d 210 (C.C.A. 1, 1999), a consultant failed to advise corporate employees that their employer's retirement fund was short-funded. This breach of a fiduciary duty of fairness was attributed to

the employer and it caused equitable tolling of a Federal Statute of Limitations for all employees. In *Ellis v. General Motors Acceptance Corp.*, 160 F.3d 703 (C.C.A. 11, 1999), an "Inequitable circumstances" test was used to toll the Federal Truth In Lending statute of limitations for a customer. In this case both the tax court and the Tenth Circuit refused to apply equitable tolling to the 150-day rule in I.R.C. 6224(c)(2). This was either the minority view or it was error.

Under principles of constitutional law, however, tolling is automatic until the I.R.S. demonstrates that it did in fact provide notice of prior settlements. Petitioners assert that the failure of the I.R.S. to admit its duty of notice under I.R.C. 6224(c)(2), combined with a total failure to prove any notices to any partners of settlements made, is such a constitutional defect.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DATED APRIL 14, 2000

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-9024
(T.C. No. 14326-88)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY MORIKONE,

Petitioners – Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

No. 99-9025
(T.C. No. 19427-89)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY MORIKONE,

Petitioners – Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee.

Appendix A

ORDER AND JUDGMENT*

Before **BRORBY**, and **LUCERO**, Circuit Judges and **WEST**, Senior District Judge**.

After examining the materials on file, this panel has determined unanimously that oral argument is not necessary. *See* Fed. R. App. P. 34(a)(2)(B); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted on the current record.

In these appeals, petitioners challenge two orders of the tax court issued on March 5, 1998. *See Estate of Campion v. Comm'r*, 110 T.C. 165 (1998); *Vulcan Oil Tech. Partners v. Comm'r*, 110 T.C. 153 (1998). In those orders, the court held the Commissioner did not breach any statutory or regulatory duties when it failed to offer these appellants more favorable treatment following a failed tax-shelter scheme. Specifically, the court held the Internal Revenue Service did not breach its duty of disclosure under the Tax Equity and Responsibility Act of 1982 and that it did not commit fraud in failing to offer more favorable settlements to these petitioners than to other taxpaying entities. These appeals followed.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** The Honorable Lee R. West, Senior Judge, U.S. District Court for the Western District of Oklahoma, sitting by designation.

Appendix A

Because of the numbers of individuals and partnerships involved in this scheme, multiple entities filed notices of appeal from the tax court's orders. In total, this court received, either through transfer or originally, 45 appeals seeking review of the 1998 orders. In late 1998, this court ordered briefing in 8 lead cases, which were then heard at oral argument in September, 1999. The remainder were abated.[1] On November 2, 1999, this court issued an Order & Judgment affirming the tax court in all respects. *See Tucek v. Comm'r*, Nos. 98-9016, 98-9017, 98-9018, 98-9019, 98-9020, 98-9022, 98-9023, and 98-9024, (10th Cir. Nov. 2, 1999).

On January 3, 2000, this court directed petitioners in these appeals to show cause why the remaining cases were not controlled by the panel decision in *Tucek*. In a response filed on January 24, appellants admitted that "the substance of the issues is identical in all of the cases in this group." *See Petitioners' Response*, dated January 24, 2000, at 2. In a pleading filed on February 17, 2000, the government opined that the issues raised in all of the appeals are identical and that summary affirmance is appropriate.

Upon careful review of the responses, as well as these files, we agree that the issues presented in these matters are identical to those raised and addressed in this panel's Order & Judgment in *Tucek*. Consequently, we

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1. Two notices of appeals were filed after this court issued its disposition in the lead cases. Those two appeals, numbers 99-9029 and 99-9039, both styled *Dodson v. Comm'r*, were not abated.

Appendix A

AFFIRM the judgments of the tax court for substantially the same reasons as are set forth in that panel decision. The mandates shall issue forthwith.

Entered for the Court

Per Curiam

APPENDIX B — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DATED NOVEMBER 2, 1999

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-9024
(T.C. No. 21530-87)
(Appeal from U.S. Tax Court)

THOMAS L. MCCAFFREY; KAY V. MCCAFFREY; and DILLON OIL TECHNOLOGY PARTNERS,

Petitioners – Appellants,

and

VULCAN OIL TECHNOLOGY PARTNERS; VANGUARD OIL TECHNOLOGY PARTNERS; DRAKE OIL TECHNOLOGY PARTNERS; DERRINGER OIL TECHNOLOGY PARTNERS 1981; DERRINGER OIL TECHNOLOGY PARTNERS 1982; CROWNE OIL TECHNOLOGY PARTNERS; CARLTON OIL TECHNOLOGY PARTNERS, LTD; AMERICAN ENERGY RESOURCES, INC.; TAX MATTERS PARTNER,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee.

Appendix B

ORDER AND JUDGMENT*

Before **BRORBY**, and **LUCERO**, Circuit Judges and **WEST**, Senior District Judge**.

Appellants Vulcan Oil Technology Partners and other related partnerships (hereinafter "Vulcan Oil Partners") brought challenges in federal tax court to settlements offered to them by the Internal Revenue Service ("IRS") pursuant to a failed late-1970s and 1980s tax-shelter scheme. Vulcan Oil Partners challenged the IRS's notice procedures for settlements. The tax court denied relief in two opinions, one dealing with tax years 1979 through 1982 and the other dealing with tax years 1983 through 1985. *See Estate of Campion v. Comm'r*, 110 T.C. 165 (1998); *Vulcan Oil Tech. Partners v. Comm'r*, 110 T.C. 153 (1998). On appeal, Vulcan Oil Partners raise essentially two claims: (1) the tax court erred in holding the IRS had not violated duties to inform Vulcan Oil Partners of, and allow them to untimely participate in, earlier, more favorable settlements offered to related partnerships in the 1980s, pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, 96 Stat. 324 (codified as amended in scattered sections of 26 U.S.C.), Tax Court Rule 248, and "general standards;" and (2) the

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** The Honorable Lee R. West, Senior Judge, U.S. District Court for the Western District of Oklahoma, sitting by designation.

tax court erred in holding the IRS had not committed fraud, malfeasance, or misrepresentation in not offering Vulcan Oil Partners the earlier, more favorable settlements. We exercise jurisdiction pursuant to 26 U.S.C. § 7482 and affirm the decision of the tax court.

I

Vulcan Oil Partners invested in an enterprise to extract oil from tar sands using unproven technologies, a scheme promising a $4 tax benefit for every $1 invested. This enterprise lasted from 1979 to 1985. But the IRS caught on. It offered settlements to Vulcan Oil Partners and the other related partnerships in lieu of filing suit against them, settlements which became progressively less favorable to Vulcan Oil Partners.

Some members of related partnerships accepted more favorable settlements from the IRS in 1986, 1987, and 1988. The IRS's more favorable settlements allowed partners to deduct all of their cash investments in the tax shelter but imposed interest penalties on unpaid taxes. None of the members of Vulcan Oil Partners settled at this time. In a test case decided in 1992, the tax court held that other tax shelter partnerships that had invested in the oil recovery scheme lacked a profit objective and therefore would not be allowed to claim tax benefits. *See Krause v. Comm'r*, 99 T.C. 132 (1992), *aff'd sub nom. Hildebrand v. Comm'r*, 28 F.3d 1024 (10th Cir. 1994). In *Acierno v. Comm'r*, 74 T.C.M. (CCH) 738 (1997), *aff'd*, 185 F.3d 861 (3d Cir. 1999), the tax court applied the holding in *Krause* to one of the partnerships in this action.

Appendix B

Following *Hildebrand*, almost all the members of Vulcan Oil Partners settled under less favorable terms, whereby the IRS allowed them no deductions for their cash investments and imposed interest penalties. One member of Vulcan Oil Partners did not settle at all.

When those members of Vulcan Oil Partners decided to settle under less favorable terms, the IRS did not inform them of the previous, more favorable settlements it had offered in the 1980s to related partnerships. The IRS also did not allow Vulcan Oil Partners to participate in those more favorable settlements once Vulcan Oil Partners learned of the previous settlements.

II

We review tax court decisions "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury." 26 U.S.C. § 7482(a)(1). We review the tax court's factual findings under the clearly erroneous standard and review its legal conclusions de novo. We review mixed questions of law and fact either under the clearly erroneous standard or de novo, depending on whether the mixed question is primarily factual or legal. *See Anderson v. Comm'r*, 62 F.3d 1266, 1270 (10th Cir. 1995).

In claiming the IRS violated duties to inform them of and allow them to participate in the earlier settlements, appellants allege procedural duties under the TEFRA, Tax Court Rule 248, and "general standards."

First, with regard to TEFRA, all partners have a right — for a limited period of time — to participate in settlements

offered to other partners. *See* 26 U.S.C. § 6224(c)(2). But the IRS has no statutory duty to inform all partners of settlement offers. TEFRA states that "the Secretary shall offer to any other partner *who so requests* settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement." *Id.* (emphasis added). Partners are assumed to have knowledge of settlement offers because, pursuant to TEFRA, the IRS informs designated contact-persons at partnerships — called Tax Matters Partners ("TMPs") — of all offers. *See* 26 U.S.C. § 6223(a) & (b); 26 C.F.R. § 301.6223(a)-1T & (b)-1T. Once the IRS notifies the TMPs of the settlement offer, it is the TMPs' responsibility, and not the responsibility of the IRS, to inform all of the other partners. *See* 26 U.S.C. § 6223(g); 26 C.F.R. § 301.6223(g)-1T; *see also Kaplan v. United States*, 133 F.3d 469, 475 (7th Cir. 1998) (explaining that "[t]his manner of notifying small-share partners . . . reflects a congressional decision to ease the administrative burden on the IRS. Section 6223(b) provides actual — but not personal — notice to all partners in light of *the* common-law principle of partnership law that notice to one general partner constitutes notice to all partners.").

After the IRS mails notice of the settlement offer — the "final partnership administrative adjustment" ("FPAA") — to the TMPs, all partners can participate in the offer until either "[t]he 150th day after the day on which the notice of [FPAA] is mailed to the TMP, or . . . [t]he 60th day after the day on which the settlement was entered into," whichever comes later. 26 C.F.R. § 301.6224(c)-3T.

The tax court found that Vulcan Oil Partners had presented no evidence that the IRS had improperly failed to notify them

through their TMPs of the earlier, more favorable settlements, pursuant to TEFRA, 26 U.S.C. § 6223(a). *See Vulcan Oil Tech. Partners*, 110 T.C. at 161. The court instead found that Vulcan Oil Partners had failed to participate in those settlements in timely fashion under TEFRA regulations, 26 C.F.R. § 301.6224(c)-3T, waiting a period of years before seeking to participate. *See id.* at 162. After thoroughly reviewing the record, we conclude that the tax court properly denied appellants' claim: The IRS did not breach its duties pursuant to TEFRA of informing appellants of, and allowing them to participate in, the earlier, more favorable settlements. In addition, the tax court was correct in holding that the consistent settlement provision of TEFRA did not apply to settlements involving partnership taxable years before Sept. 3, 1982. *See* TEFRA, Pub. L. No. 97-248, § 407(a)(1), 96 Stat. 324, 670; *Estate of Campion*, 110 T.C. at 169-70.

With regard to Tax Court Rule 248(c), the IRS is required under the rule to inform the TMP of the fact and terms of a settlement if the non-settling partners have not consented to the settlement agreement. But as the tax court pointed out, *see Vulcan Oil Tech. Partners*, 110 T.C. at 160-61, Rule 248 did not come into effect until September 1, 1988, almost a year-and-a-half after the last cash settlements had been entered into. *See* 88 Tax Notes Today 116-43 (June 1, 1988). Thus, the IRS was under no obligation to comply with the rule for settlements entered into before that date. Moreover, based on our examination of the record, we agree with the tax court's finding that "there is no credible evidence that respondent [IRS] failed to comply with Rule 248(c)(2) after that date." *Vulcan Oil Tech. Partners*, 110 T.C. at 161.

Finally, with regard to IRS duties arising from "general standards," Vulcan Oil Partners argue that the "defective settlement procedure" followed by the IRS creates "an implied agreement which keeps the settlement offer open for curative ratification by the proper parties." (Appellants' Br. at 38). However, in the present case, even if Vulcan Oil Partners are correct that a "defective" procedure creates such an "implied agreement," Vulcan Oil Partners have failed to show any colorable "defective" IRS procedures, rendering inapposite their reference to the doctrine of "prior implied consent." *Id.* at 39.

III

As for the claim of fraud, malfeasance, and misrepresentation by the IRS, there is simply no evidence cited in appellants' briefs for these allegations. Appellants cite "a pattern of IRS delaying tactics, avoidance, miscommunication, poor coordination, and double-talk concerning the existence of, the terms of, and the applicability of the earlier global settlement offer." (Appellants' Br. at 56). As evidence of this "pattern," appellants cite "correspondence, inadequate response to discovery, evasive answers in later depositions and in the evidentiary hearing before the Court." *Id.* The tax court did not find evidence of any of these misdeeds, *see Vulcan Oil Tech. Partners*, 110 T.C. at 164; *Estate of Campion*, 110 T.C. at 171-72, and we likewise unearthed no such perfidies in our examination of the record. We find the appellants' assertions in this regard to be wholly conclusory and therefore meritless.

Appendix B

Because nothing in the record leads us to believe the IRS has breached its statutory or regulatory duties toward the appellants or has committed fraud, malfeasance, or misrepresentation, we find the appellants' claims to be meritless. The judgment of the tax court is AFFIRMED.

ENTERED FOR THE COURT

Carlos F. Lucero

Circuit Judge

APPENDIX C — OPINION OF THE UNITED STATES TAX COURT IN *VULCAN OIL TECHNOLOGY PARTNERS, et al. v. COMMISSIONER OF INTERNAL REVENUE* DATED AND FILED MARCH 5, 1998

110 T.C. No. 15

UNITED STATES TAX COURT

VULCAN OIL TECHNOLOGY PARTNERS, VANGUARD OIL TECHNOLOGY PARTNERS, DRAKE OIL TECHNOLOGY PARTNERS, DILLON OIL TECHNOLOGY PARTNERS, DERRINGER OIL TECHNOLOGY PARTNERS-1981, DERRINGER OIL TECHNOLOGY PARTNERS-1982, CROWNE OIL TECHNOLOGY PARTNERS, CARLTON OIL TECHNOLOGY PARTNERS, LTD., AMERICAN ENERGY RESOURCES, INC., TAX MATTERS PARTNER, ET AL.,[1]

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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1. Cases of the following petitioners are consolidated herewith: Vulcan Oil Technology Partners, Vanguard Oil Technology Partners, Drake Oil Technology Partners, Dillon Oil Technology Partners, Derringer Oil Technology Partners 1981, Derringer Oil Technology Partners 1982, Crowne Oil Technology Partners, Carlton Oil Technology Partners, Ltd., American Energy Resources, Inc., Tax Matters Partner, docket No. 16768; and Crowne Oil Technology Partners, American Energy Resources, Inc., Tax Matters Partner, docket No. 24725-89.

Appendix C

Docket Nos. 21530-87, 16768-88, 24725-89.

Filed March 5, 1998.

* * *

OPINION

SWIFT, *Judge*: This matter is before the Court in these consolidated cases on movants' motions, under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, 96 Stat. 324, partnership provisions and under Rule 245(b),[2] for leave to file untimely notices of election to participate with attached notices of election to participate, and motions, under Rule 50, to set aside settlement agreements and/or to require respondent now to enter into consistent settlement agreements. An evidentiary hearing was held on May 21, 1997, in regard to these motions.

The particular years before us in these consolidated cases are 1983, 1984, and 1985 — years subject to the TEFRA partnership provisions. In *Estate of Campion v. Commissioner*, 110 T.C. __, (1998), with regard to years prior to the effective date of the TEFRA partnership provisions, other investors in the Elektra Hemisphere tax shelters have filed motions similar to the instant motions. Our opinion in *Campion* is also filed this date.

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2. Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code for the years in issue.

Appendix C

The underlying tax shelter investments that are involved in these consolidated cases constitute investments in seven Denver-based limited partnerships and are related to the so-called Elektra Hemisphere tax shelter investments that were the subject of litigation in this Court in *Krause v. Commissioner*, 99 T.C. 132 (1992), *affd. sub nom. Hildebrand v. Commissioner*, 28 F.3d 1024 (10th Cir. 1994); *Acierno v. Commissioner*, T.C. Memo. 1997-441; *Karlsson v. Commissioner*, T.C. Memo. 1997-432; and *Vanderschraaf v. Commissioner*, T.C. Memo. 1997-306.

In *Acierno v. Commissioner*, *supra*, we found that the Denver-based partnerships that are involved in the instant cases were similar to the Manhattan and Wichita partnerships that were involved in the lead test cases in the Elektra Hemisphere tax shelter project of *Krause v. Commissioner*, *supra*, and accordingly that the limited partners of the Denver-based partnerships who had not settled their cases with respondent were to be bound by the opinion in *Krause*. The settlements that most of the movants herein entered into, during 1994 and later years, are consistent with our decisions in *Krause* and the above-cited related cases (namely, no deductions are to be allowed to the taxpayers relating to their investments in the Elektra Hemisphere tax shelters, and the taxpayers are not to be held liable for additions to tax or penalties other than increased interest under section 6621(c) or its predecessor section 6621(d)) (hereinafter referred to as the no-cash settlements)

On an untimely basis, the majority of the movants herein now seek permission from the Court to file notices of election to participate in the instant TEFRA partnership proceedings

for the purpose of seeking an order from the Court that would set aside the no-cash settlement agreements that they entered into and that would require respondent to enter into revised settlement agreements with movants consistent with the more favorable settlement terms that were available generally to investors in the Elektra Hemisphere tax shelters during 1986, 1987, and 1988 (namely, tax deductions were allowed for the amount of cash that investors had invested in the Elektra Hemisphere tax shelters and no additions to tax or penalties were imposed other than increased interest under section 6621(c) or its predecessor section 6621(d) (hereinafter referred to as the cash settlements).

The remaining movants herein have not yet entered into any settlement agreements with respondent relating to tax benefits movants claimed on their Federal income tax returns relating to their Elektra Hemisphere tax shelter investments. Such movants seek from the Court an order that would require respondent to now enter into settlement agreements with them consistent with the cash settlements that were available generally to investors in the Elektra Hemisphere tax shelters during 1986, 1987, and 1988.

All of the movants herein seek permission from the Court to file notices of election to participate in the instant TEFRA partnership proceedings solely for purposes of obtaining from the Court an order requiring respondent to enter into settlements with them consistent with the terms of the cash settlements.

Beginning in 1986, respondent's settlement position with regard to investments in the Elektra Hemisphere tax shelters

reflected the cash settlement terms to which many investors, during 1986, 1987, and 1988, agreed, including many investors who had invested in the seven Denver-based Elektra Hemisphere partnerships. Over the years, however, respondent's settlement position relating to the Elektra Hemisphere tax shelters has changed, and terms of the settlement offers that respondent has made available to investors have changed accordingly. As time progressed and as the *Krause v. Commissioner*, *supra*, lead test cases approached trial, respondent's settlement position generally became less favorable to investors and more favorable to respondent. Each of respondent's various settlement positions contained time deadlines or termination dates beyond which a particular settlement position would no longer be available to investors.

As indicated, after the opinion in *Krause v. Commissioner*, *supra*, was rendered by this Court, many of the movants herein agreed to settle on the basis of respondent's then pending no-cash settlement position.

In the instant motions, movants allege that a structural defect or a fraud on the Court occurred in obtaining from movants the above-referenced no-cash settlements and that respondent had, and has, under the TEFRA partnership provisions, a continuing duty of consistency to treat all investors in the Elektra Hemisphere tax shelters consistently and to affirmatively now make available to all investors the most favorable settlement terms that ever were offered to any of the investors.

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More specifically, movants allege —

(1) that the no-cash settlements that were agreed to by movants herein during 1994 and later years were premised on the erroneous fact that no better settlements were available to investors;

(2) that during 1994 and later years, when the no-cash settlements that movants now seek to set aside were entered into, movants and their counsel allegedly were not aware of the prior more favorable cash settlements that other taxpayers had entered into during 1986, 1987, and 1988; and

(3) that under the TEFRA partnership provisions movants herein, during 1994 and later years, should have been and should now be allowed to settle their tax adjustments relating to their investments in the Elektra Hemisphere tax shelters consistently with the cash settlements offered in prior years.

Movants further allege the existence of "a pervasive and manufactured conspiracy" among respondent's counsel to deprive movants herein and other taxpayers of proper TEFRA partnership settlement procedures. Movants contend that the allegedly defective settlement procedures respondent utilized in obtaining settlements with movants herein affected thousands of investors in the Elektra Hemisphere tax shelters.

In response, respondent emphasizes that the no-cash settlements that movants agreed to and that they now seek

to disavow are based on and are consistent with the results of the above-cited test cases. Respondent argues that movants herein (having refused to settle on a cash basis in 1986, 1987, and 1988, having "waited out" the litigation of the lead test cases until our opinion in *Krause v. Commissioner*, *supra*, was rendered in 1992, and now not liking the results) are simply the victims of their own procrastination or litigation strategy, not of any structural defect or fraud on the Court.

Respondent also emphasizes that, under the TEFRA provisions, respondent had no affirmative obligation to notify movants that, in earlier years, some of the Elektra Hemisphere investors settled their disputes with respondent relating thereto on any particular terms.

Respondent responds further that —

(1) movants did not make timely requests for consistent settlements during the time period when respondent's cash settlement position was open to all Elektra Hemisphere investors;

(2) that there is no requirement that respondent specifically notify each investor of each settlement agreement; and

(3) with regard to the specific settlement agreements that movants entered into, movants have not shown any fraud, malfeasance, or misrepresentation as a basis for setting aside the settlement agreements.

We agree with each of respondent's arguments.

Appendix C

The evidence indicates that the cash settlements that, during 1986, 1987, and 1988, many investors entered into with respondent reflected a date of September 30, 1986, by which date, under the terms of respondent's offer to settle, investors needed to notify respondent of their willingness to settle on that basis. Those investors who so notified respondent were allowed in 1986, 1987, and 1988 to finalize the related computations under the cash settlements.

The schedule below sets forth the specific dates on which respondent mailed notices of Final Partnership Administrative Adjustments (FPAA's) to the Denver-based partnerships with respect to 1983, 1984, and 1985 and also the latest dates on which cash settlement agreements were finalized with partners in each of the partnerships:[3]

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3. The schedule reflects information with regard to each of the Denver-based Elektra Hemisphere tax shelter partnerships except for those partnerships with respect to whose partners either no prior cash settlements were entered into or with respect to which no consistent settlements have been requested by any of the movants herein (namely, Canton Oil Technology Partners, Ltd., for 1984 and 1985, Crowne Oil Technology Partners for 1984 and 1985, Derringer Oil Technology Partners-1981 for 1984 and 1985, Dillon Oil Technology Partners for 1985, Vanguard Oil Technology Partners for 1984 and 1985, and Vulcan Oil Technology Partners for 1984 and 1985).

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Year	Partnership	Date FPAA Mailed	Date of Latest Settlement
1983	Crowne	4/15/87	12/29/87
	Derringer-1981	3/30/87	11/17/87
	Derringer-1982	3/30/87	12/08/87
	Dillon	4/15/87	11/15/88
	Drake	4/06/87	12/22/87
	Vanguard	3/30/87	9/10/87
	Vulcan	3/30/87	9/23/87
1984	Derringer-1981	4/11/88	11/17/87
	Derringer-1982	3/28/88	12/08/87
	Dillon	4/11/88	11/15/88
1985	Derringer-1981	4/11/88	9/17/87
	Derringer-1982	3/28/88	12/08/87

As settlement agreements were finalized, personnel in respondent's Ogden Service Center, which was the key-case Service Center for the Denver-based Elektra Hemisphere tax shelter partnerships, generally mailed copies of the final agreements to the tax matters partner of each partnership.

In late 1993 and early 1994, respondent mailed settlement offers to investors in the Denver-based partnerships who had not previously settled, reflecting respondent's then-current no-cash settlement position. The mailing from respondent contained a standard transmittal letter, a schedule of partnership adjustments consistent with this Court's opinion in *Krause v. Commissioner*, 99 T.C. 132 (1992), and a proposed settlement agreement form.

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Respondent's transmittal letters contained a statement that "we have completed settlement negotiations for the partnership shown above," and indicated a 30-day deadline for acceptance of the terms of the settlement.

All of the movants in these cases with respect to the instant motions (except Frank Acierno, Jack and Katherine Schoellerman, Mary F. Hill, and David and Barbara Jonson) executed settlement agreements reflecting the no-cash settlement terms consistent with the *Krause* opinion and such settlements were finalized. The earliest settlement agreement executed by a movant herein was signed on January 3, 1994, and the latest one was signed on December 1, 1994.

Between February 16 and March 27, 1995, written requests to respondent were made by the movants herein (with exception of William and Arlene Ginn and Lomand and Janice Beals)[4] for the opportunity to set aside their prior no-cash settlement agreements with respondent and to enter into new settlement agreements with respondent consistent with the cash settlement terms that had been entered into by other investors during 1986, 1987, and 1988. Respondent denied each such request on the grounds that each request was untimely, that each investor making such request had previously entered into a settlement agreement with respondent, and that each such settlement agreement had converted the investors' partnership items to nonpartnership items.

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4. The Ginns and the Beals appear not to have made a written request to respondent for a consistent settlement.

Appendix C

The TEFRA provisions expressly provide that where a settlement agreement is entered into between respondent and a partner in a partnership before issuance of the relevant FPAA to the tax matters partner (TMP), other partners who wish to enter into consistent settlement agreements must make requests therefor within 150 days after the FPAA is mailed to the TMP. Section 6224(c)(2) reads in pertinent part and with exceptions not applicable herein, as follows:

> SEC. 6224(c)(2). Other partners have right to enter into consistent agreements. — If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. * * * this paragraph shall apply with respect to a settlement agreement entered into with a partner before notice of a final partnership administrative adjustment is mailed to the tax matters partner only if such other partner makes the request before the expiration of 150 days after the day on which such notice is mailed to the tax matters partner.

Where, after issuance of the related FPAA to the TMP, a settlement agreement is entered into with a partner, section 301.6224(c)-3T(c)(3), Temporary Proced. & Admin. Regs., 52 Fed. Reg. 6787 (Mar. 5, 1987), provides that other partners who wish to enter into consistent settlement agreements must submit a request therefor to respondent within either 150

days after the FPAA was issued or 60 days after the day on which the prior settlement was entered into, whichever is later. Section 301.6224(c)-3T, Temporary Proced. & Admin. Regs., 52 Fed. Reg. 6787 (Mar. 5, 1987), reads in part as follows:

> (a) In general. If the Service enters into a settlement agreement with any partner with respect to partnership items, the Service shall offer to any other partner who so requests in accordance with paragraph (c) of this section settlement terms which are consistent with those contained in the settlement agreement entered into.
>
> * * * * * * * *
>
> (c) Time and manner of requesting consistent settlements — (1) In general. A partner desiring settlement terms consistent with the terms of any settlement agreement entered into between any other partner and the Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.
>
> * * * * * * * *
>
> (3) Time for filing request. The statement shall be filed not later than the later of —
>
> (i) The 150th day after the day on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, or

(ii) The 60th day after the day on which the settlement was entered into.

At the time the cash settlements involved in these cases were entered into, there was no statutory or regulatory provision that placed on respondent the duty to notify each partner in a TEFRA partnership that a settlement was entered into. Rather, section 6223(g) and section 301.6223(g)-1T(b)(1)(iv), Temporary Proced. & Admin. Regs., 52 Fed. Reg. 6786 (Mar. 5, 1987), placed the duty on the TMP to keep each partner informed about settlement offers that had been entered into by partners. It was the TMP, not respondent, who had the duty of notification to other investor-partners of the fact and date that settlements were entered into.

Movants erroneously rely on Rule 248 as a ground for establishing that, during 1986 through 1988, notice to them of the cash settlements was defective. Rule 248(c)(1), which requires notification to the Court, only applies to settlements with participating partners, and the evidence does not establish that any of the participating partners in the instant cases ever entered into prior cash settlements with respondent. Also, Rule 248(c)(2), which requires respondent to give notice to the TMP's when a partner enters into a settlement, was not effective until September 1, 1988, see Note to Rule 248(c)(2), 90 T.C. 1376 (1988), and there is no credible evidence that respondent failed to comply with Rule 248(c)(2) after that date.

For the period January 19, 1984, through September 1, 1989, a provision of respondent's manual provided that upon

receipt of a settlement in a TEFRA partnership audit or proceeding, respondent's Service Center was to notify the appropriate TMP's of the settlement, and the responsibility then fell on the TMP's to notify other partners of the settlement. Movants argue that respondent did not follow this manual procedure with regard to the Elektra Hemisphere tax shelter partnerships, and therefore that all movants herein (those who already entered into no-cash settlements and those who have not yet entered into any settlements) should now be entitled to enter into cash settlements. With regard to this argument, we note that movants have failed to present any credible testimony from the TMP's of the partnerships, from other partners, from their representatives, or others to support their claim that respondent failed to give proper notice of settlements to the TMP's under this manual provision and that the TMP's and other partners did not timely know of cash settlements that were available during 1986, 1987, and 1988.

Also, failure of respondent to comply with the above manual provision would provide little support for granting movants' motions herein. *See United States v. Caceres*, 440 U.S. 741 (1979); *Keado v. United States*, 853 F.2d 1209 (5th Cir. 1988); *Loleski v. Boandl*, 788 F.2d 196 (3d Cir. 1986); and *United States v. Horne*, 714 F.2d 206 (1st Cir. 1983), which provide that irregularities in following manual provisions not involving constitutional rights generally will not give rise to legal remedies.

Further, section 6230(f) expressly provides that the failure of the TMP to provide notice or to perform any act on behalf of any partner, as required by either the statute or

the regulations, would not affect the applicability of any partnership proceeding or adjustment to such partner. Thus, despite the TMP's alleged failure to provide notice to movants of cash settlements that were entered into in 1986 through 1988, movants herein have no right now to require respondent to enter into cash settlements.

Under no statutory or regulatory provision, Court rule, or other basis, was respondent required to give movants herein notice of cash settlements that, during 1986 through 1988, were entered into between respondent and investors in the Elektra Hemisphere tax shelters. Responsibility for providing notice to movants was with the TMP's of the various Elektra Hemisphere tax shelter partnerships.

The latest cash settlement agreements that were entered into between respondent and investors with respect to each of the 1983 Elektra Hemisphere partnership tax years in question and with respect to the 1984 tax year of the Dillon partnership were entered into in late 1987 and late 1988 *after* the respective FPAA's were mailed to the respective TMP's in early 1987 and early 1988. Any requests by movants herein for consistent settlements with regard to those specific partnerships and those specific years should have been made within 60 days after the latest cash settlement was entered into. Since movants' requests for consistent settlements pertaining to 1983 and 1984 were made by movants in 1995, they are untimely by approximately 6 years.

With respect to the 1984 and 1985 tax years of Derringer-1981 and 1982, the latest cash settlement agreements were entered into in November and December of 1987, *before*

respondent's FPAA's were mailed to the TMP's in March and April of 1988. Since the settlements were entered into before the FPAA's were mailed, the timeliness of movants' requests for consistent settlements is controlled by section 6224(c)(2), and the requests are untimely because they were not made within the 150-day deadline. Rather, they were made more than 6 years thereafter.

With regard to Carlton, no cash settlements were entered into during the 1986 through 1988 years or thereafter, and therefore there exists no cash settlement in respect to which any of the movants herein can even seek a consistent settlement.

In spite of the fact that no prior cash settlements exist for some of the Elektra Hemisphere tax shelter partnerships for the years involved herein, some of the movants herein — who were partners in such partnerships — argue that they nevertheless should now be entitled to cash settlements for such years. Such requests for "consistent" settlements are based on cash settlements that were entered into with partners in partnerships other than partnerships in which movants invested and/or with respect to years other than years in which movants invested. For example, there were no cash settlements entered into by any partners in Crowne for 1984, but five of the movants herein are partners in Crowne and are now requesting cash settlements for that year.

Under a plain reading of section 6224(c)(2), "any other partner" is to be interpreted only as a partner in the same partnership, and "partnership items" relate only to the same partnership tax year. Partners in different partnerships and

partners in the same partnerships for different years do not have the same partnership items. Absent a specific agreement or stipulation to the contrary, the consistent settlement rules of section 6224(c)(2) do not apply to an entire tax shelter project, nor to partnerships within a group of related partnerships (such as the Denver-based Elektra Hemisphere tax shelter partnerships)

What we said in *Boyd v. Commissioner*, T.C. Memo. 1992-626, in this regard is pertinent —

> Even if TEFRA were to apply, the settlement agreement for * * * [partnership A] would not be imposed on petitioner or any other partner in * * * [partnership B] because * * * [partnership B] is a separate partnership from * * * [partnership A]. Petitioner was not a partner in * * * [partnership A] or any of the six other partnerships for which settlement agreements were reached. There is no provision in the Code requiring * * * [respondent] to settle the * * * [B partnership] under the same settlement terms that were negotiated for the * * * [A partnership], a separate and distinct partnership. [Citation omitted.]

Lastly, we address briefly movants' allegations that fraud, malfeasance, and misrepresentations of fact occurred that provide a basis for setting aside the no-cash settlements that the majority of the movants herein entered into with respondent with respect to their investments in the Elektra Hemisphere tax shelters.

Appendix C

Movants cite *DuFresne v. Commissioner*, 26 F.3d 105 (9th Cir. 1994), vacating and remanding T.C. Memo. 1991-614, in which the U.S. Court of Appeals for the Ninth Circuit vacated a decision in a test case and remanded the case for further proceedings based on information that a corruption of the processes of this Court and of the rights of the taxpayers may have occurred, allegedly as a result of secret, out-of-the-ordinary settlement agreements entered into between respondent and certain trial witnesses. Nothing comparable is presented to us in the instant consolidated cases.

The credible evidence herein indicates that the settlement agreements available to investors in the Elektra Hemisphere tax shelters during 1986 and 1987 were available to all investors. No credible evidence corroborates movants' contentions that in 1986 and 1987 they, or their counsel, were not aware of respondent's willingness to settle their tax disputes relating to investments in the Elektra Hemisphere tax shelters on the same cash basis on which other taxpayers during those years settled with respondent.

Movants' reliance on some ambiguities in certain forms and letters mailed by respondent to movants regarding terms of settlements that were available is futile. There is no credible evidence that such ambiguities were intentional, that they gave rise to material misrepresentations, or that they in any way constituted fraud or malfeasance.

There is no evidence herein that would support a finding of fraud, malfeasance, or misrepresentations of fact on respondent's behalf with regard to any aspect of the cash

settlements that were entered into during 1986 through 1988 between respondent and other Elektra Hemisphere investors and with regard to any aspect of the no-cash settlements that were entered into in later years between respondent and movants herein.

For the reasons stated, each of movants' motions will be denied.

Appropriate orders will be issued.

APPENDIX D — OPINION OF THE UNITED STATES TAX COURT IN *ESTATE OF JAMES T. CAMPION, DECEASED, et al. v. COMMISSIONER OF INTERNAL REVENUE* DATED AND FILED MARCH 5, 1998

110 T.C. No. 16

UNITED STATES TAX COURT

ESTATE OF JAMES T. CAMPION, DECEASED, LEONA CAMPION, EXECUTRIX, ET AL.,[1]

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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1. Cases of the following petitioners are consolidated herewith: Ladd T. Tucek and Philamena Tucek, docket No. 22346-86; Tony W. and Candace P. Dial, docket No. 31310-86; George M. and Grace E. Collins, docket Nos. 32931-86 and 12476-87; James and Lynne M. Lotta, docket Nos. 4142-87 and 7300-89; Alden B. and Earlene Chase, docket No. 18986-87; Edward R. and Sandra Chase, docket No. 21147-87; Thomas L. and Betty R. Saliba, docket No. 24227-87; Estate of James T. Campion, Deceased, Leona C. Campion, Executrix, and Leona C. Campion, docket No. 24013-88; Scott K. and Barbara F. Monroe and Charles R. and Iva M. Reif, docket No. 4646-89; Dwight V. and Christine G. Call, docket No. 8272-89; and Michael and Mary Lee Rafferty, Jr., Thomas L. and Betty R. Saliba, and Theodore L. and Rosemary L. Shebs, docket No. 18502-89.

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Docket Nos. 12235-86, 31310-86, 4142-87, 18986-87, 24227-87, 4646-89, 8272-89, 22346-86, 32931-86, 12476-87, 21147-87, 24013-88, 7300-89, 18502-89.

Filed March 5, 1998.

* * *

OPINION

SWIFT, *Judge*: This matter is before the Court in these consolidated cases on petitioners' motions for leave to file motions to vacate decisions with attached motions to vacate under Rule 162.

Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code for the years in issue.

In each of these cases, petitioners and respondent settled all issues, and final decisions have been entered. The 90-day appeal period has expired, and petitioners now seek orders from the Court vacating the decisions and requiring respondent to enter into new settlement agreements with petitioners that would reflect settlement terms that were available to investors in the so-called Elektra Hemisphere tax shelters in 1986, 1987, and 1988.

The particular years before us in these consolidated cases are 1979, 1980, 1981, and 1982 — years prior to the effective date of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, 96 Star. 324, partnership

provisions. In *Vulcan Oil Tech. Partners v. Commissioner*, 110 T.C. __ (1998), with regard to 1983 and later years that are subject to the TEFRA partnership provisions, other investors in the Elektra Hemisphere tax shelters have filed motions similar to the instant motions. Our opinion in *Vulcan* is also filed this date.

The underlying tax shelter investments that are involved in these consolidated cases are referred to as investments in certain Denver-based limited partnerships and were related to the Elektra Hemisphere tax shelters that were the subject of litigation in this Court in *Krause v. Commissioner*, 99 T.C. 132 (1992), affd. sub nom. *Hildebrand v. Commissioner*, 28 F.3d 1024 (10th Cir. 1994); *Acierno v. Commissioner*, T.C. Memo. 1997-441, *Karlsson v. Commissioner*, T.C. Memo. 1997-432; and *Vanderschraaf v. Commissioner*, T.C. Memo. 1997-306.

In *Acierno v. Commissioner*, *supra*, we found that the Denver-based partnerships that are involved in the instant cases were similar to the Manhattan and Wichita partnerships that were involved in the test cases of *Krause v. Commissioner*, *supra*, and accordingly that the limited partners of the Denver-based partnerships who had not settled their cases with respondent were to be bound by the opinion in *Krause*. The settlements that petitioners herein entered into and that they now seek to set aside are consistent with our decisions in *Krause* and the above-cited related cases (namely, no deductions are to be allowed to the taxpayers relating to their investments in the Elektra Hemisphere tax shelters, and the taxpayers are not to be held liable for additions to tax or penalties other than increased interest under section 6621(c)

or its predecessor section 6621(d)) (hereinafter referred to as the no-cash settlements).

Beginning in 1986, respondent made a number of offers to the investors-taxpayers to settle tax adjustments that respondent had determined involving the Elektra Hemisphere tax shelters, including those in the Denver-based partnerships. Over the years, respondent's settlement position with regard to the issues involved in the Elektra Hemisphere tax shelters has changed, and terms of the settlement offers that respondent has made available to investors have changed accordingly. As time progressed and as the test cases approached trial, respondent's settlement position generally became more favorable to respondent and less favorable to the investor-taxpayers. Each of respondent's various settlement positions contained time deadlines or termination dates beyond which a particular settlement position would no longer be available.

Under respondent's settlement position as of 1986, investors generally were allowed tax deductions reflecting the full amount of their cash out-of-pocket invested in the respective Elektra Hemisphere tax shelter, and no penalties or additions to tax were imposed other than increased interest under section 6621(c) or its predecessor section 6621(d) (hereinafter referred to as the cash settlement). Petitioners herein did not agree to settle the tax deficiencies and additions to tax that respondent had determined against them relating to their investments in the Elektra Hemisphere tax shelters on that basis. Rather, petitioners waited until after the opinion in *Krause v. Commissioner*, *supra*, was rendered in 1992 and agreed to settle at that time, or in later years, on

the basis of respondent's then pending no-cash settlement position. Not only did petitioners agree to settle, but petitioners signed stipulated decision documents reflecting the no-cash settlement position, and such decision documents were entered by the Court and are now final.

Petitioners allege that a structural defect or a fraud on the Court occurred in settling these cases and that respondent, under the TEFRA partnership statutory provisions, had a duty of consistency to treat all taxpayers consistently and to make available to all taxpayers *at all points in time* the most favorable settlement terms that were offered to any taxpayer.

More specifically, petitioners allege —

(1) that the settlements that were agreed to in the instant cases were premised on the erroneous fact that no better settlements were available to the taxpayers;

(2) that because of the express language of section 6224(c)(2), the TEFRA partnership *settlement* procedures apply to partnerships for all years, once partnerships are subject to the general TEFRA partnership provisions for any year;

(3) that, during 1994 and later years, when petitioners entered into their settlements for the pre-TEFRA years (1979-1982), petitioners and their counsel allegedly were not notified by respondent of the prior, more favorable cash

settlements that other taxpayers during 1986, 1987, and 1988 had agreed to; and

(4) that (because of (2) above) the Elektra/ Hemisphere tax shelter partnerships' pre-TEFRA years effectively became, or should be treated as becoming, subject to the TEFRA partnership settlement procedures. Thus, petitioners herein allege that during 1994 and later years they should have been allowed to settle their cases consistent with the most favorable settlement terms offered to any other taxpayers at any time. -

Petitioners allege the existence of "a pervasive and manufactured conspiracy" among respondent's counsel to deprive them and other taxpayers of the TEFRA *settlement* procedures for pre-TEFRA years. Petitioners allege that the defective settlement procedures that were utilized to settle the instant cases also affected some 2,000 other settlement agreements and a total of 12,000 case dispositions.

Petitioners' overriding argument based on the TEFRA statutory provisions is that this Court's jurisdiction over TEFRA *settlement* procedures is broader than this Court's jurisdiction over cases in general. Petitioners point to the "Except as otherwise provided" language of section 6221 and to the language of section 6224(c)(2). Petitioners interpret the language of the latter section as providing that once a partnership becomes subject to the TEFRA provisions for any year and for any purpose, the partnership and each of its partners should be treated, *for settlement purposes*, as becoming subject to the TEFRA partnership provisions for

all years. Petitioners then argue that under such TEFRA settlement provisions they were entitled in 1994 and later years, when they settled with respondent their particular Elektra Hemisphere tax shelter cases, to be specifically informed of and to take advantage of the most favorable settlement terms that respondent ever offered any of the partners in the Elektra Hemisphere tax shelters (namely, the cash settlements available during 1986, 1987, and 1989).

Respondent emphasizes that the no-cash settlements that petitioners now seek to disavow are based on and are consistent with the results of the test cases that were decided with respect to the Elektra Hemisphere tax shelters. *Krause v. Commissioner*, 99 T.C. 132 (1992); see also *Acierno v. Commissioner*, T.C. Memo. 1997-441. Respondent argues that petitioners (having refused to settle in 1986, 1987, or 1988, having "waited out" the litigation of the *Krause* test cases until our opinion therein was rendered in 1992 and until the appeal thereof became final in 1994, and now not liking the results) are simply the victims of their own procrastination or litigation strategy, not of any structural defect or fraud on the Court.

Petitioners acknowledge that under the TEFRA partnership provisions the redetermination jurisdiction of this Court is generally limited (with an exception not applicable here) to taxable years beginning after September 3, 1982. Petitioners, however, cite the language of section 6224(c)(2) and argue that the TEFRA partnership *settlement* procedures apply to every partnership year once the partnership is subject to the general TEFRA partnership provisions for any year.

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Section 6224(c)(2) provides, in pertinent part, as follows:

> SEC. 6224(c)(2). Other partners have right to enter into consistent agreements. — If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. * * *

We disagree with petitioners' interpretation of section 6224(c)(2). Section 407 of TEFRA, 96 Stat. 610-671, expressly and specifically provides that its provisions, including the settlement procedures of section 6224, apply only to partnership taxable years beginning after September 3, 1982, with an exception not here relevant. Section 407(a)(1) of TEFRA, 96 Star. 670, provides as follows:

> Except as provided in paragraph (2), the amendments made by sections 402, 403, and 404 shall apply to partnership taxable years beginning after the date of the enactment of this Act. [Sept. 3, 1982.]

Further, petitioners' interpretation is belied by the plain language of the statute, which refers to a "partnership taxable year". The statute by its terms does not require that a settlement made with a partner in respect of a partnership's taxable year be extended to another partner for an earlier taxable year. A fortiori, no such requirement would seem to

exist if the later year is covered by the TEFRA procedures and the earlier year is not.

In *Consolidated Cable, Ltd. v. Commissioner*, T.C. Memo. 1990-657, affd. without published opinion 995 F.2d 222 (5th Cir. 1993), we implicitly recognized that the TEFRA partnership provisions did not apply to partnership taxable years that began before September 4, 1982.

In *Ackerman v. Commissioner*, T.C. Memo. 1996-315, the taxpayers entered into settlement agreements for 1982, 1983, and 1984 (that were subject to the TEFRA provisions), and we held that respondent was not precluded from making different adjustments for 1981, a year not covered by the prior settlement for the later TEFRA years and not covered by the TEFRA settlement procedures. See also *Gridley v. Commissioner*, T.C. Memo. 1997-210, in which we noted that the TEFRA settlement procedures did not apply to pre-TEFRA years.

In *Fisher v. Commissioner*, T.C. Memo. 1994-434, a duty on respondent to extend similar settlements was found to exist as to all taxpayers, but such duty was based not on any statutory requirements of TEFRA but on express contractual agreements that had been entered into by the taxpayers to be bound by results of subsequent test cases, and we concluded that a corresponding duty of disclosure was imposed on respondent to inform all taxpayers as to the outcome of the test cases. In *Fisher*, when some of the test cases were settled, other taxpayers in the group of related cases had a contractual right to be informed of the settlement and to settle their cases on the same basis. *Fisher* is distinguishable from the facts of the instant cases.

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Absent proof that a taxpayer has been singled out for disparate treatment based on impermissible considerations such as race or religion, and absent contractual agreements to the contrary, respondent is not required to offer the same settlement terms to similarly situated taxpayers. *Norfolk S. Corp. v. Commissioner*, 104 T.C. 13, 58-59, supplemented by 104 T.C. 417 (1995); *Davis v. Commissioner*, 65 T.C. 1014, 1022 (1976).

Petitioners argue that if all open years of a partnership (including pre- and post-TEFRA years) are not treated as governed by the TEFRA *settlement* procedures, certain accounting and financial statement difficulties arise. Even if true, petitioners have offered no authority to the effect that such accounting and financial statement difficulties would override the TEFRA statutory provisions that expressly provide that only partnership years beginning after September 3, 1982, are subject to the TEFRA partnership provisions.

Petitioners' allegations that a fraud has been committed on the Court are vague, confusing, and misdirected. Authority exists for setting aside a final decision of this Court based upon a fraud on the Court. See *Kenner v. Commissioner*, 387 F.2d 689, 691 (7th Cir. 1968); *Abatti v. Commissioner*, 86 T.C. 1319, 1323 (1986), affd. 859 F.2d 115 (9th Cir. 1988). But cf. *Harbold v. Commissioner*, 51 F.3d 618 (6th Cir. 1995). The cases, however, make it clear that such relief is very limited, as explained below:

> A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or

> fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. [*Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir. 1995) (quoting *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F.2d 180, 195 (8th Cir. 1974); citations omitted).]

See also *Browning v. Navarro*, 826 F.2d 335, 345 (5th Cir. 1987).

As suggested, the evidence and allegations that petitioners offer in support of their allegations of a fraud upon the Court are extremely vague and unsupported, and they call for little further discussion. We note that petitioners' counsel herein and petitioners' prior counsel represented many taxpayers who were involved in the Elektra Hemisphere tax shelters, and petitioners' former and/or present counsel likely have been aware, for many years, of *all* settlement positions that were made available by respondent.

Assuming, arguendo, that respondent's counsel — in 1994 and later years after the *Krause v. Commissioner*, 99 T.C. 132 (1992), test case opinion was rendered — did not specifically inform petitioners' counsel of all prior settlement positions that were available to investors in the Elektra Hemisphere tax shelters, there would be no basis for finding that a fraud has occurred on the Court. As explained above, TEFRA settlement procedures do not apply to these cases involving pre-TEFRA years, and there existed no obligation on respondent's counsel in these cases to inform all petitioners of each and every settlement position available to investors.

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Lastly, we emphasize that the credible factual evidence submitted in connection with petitioners' motions establishes that petitioners and all other investors in the Elektra Hemisphere tax shelters were treated consistently by respondent and were given the same opportunity to settle their tax disputes with respondent on the same terms and with the same time deadlines. The disposition of cases involved in the Elektra Hemisphere tax shelters followed specific time frames, and each different settlement position of respondent, which appears to have been adequately communicated to all investors in the Elektra Hemisphere tax shelters, was based on the "hazards of litigation" as perceived by respondent at a particular point in time.

In years after the *Krause v. Commissioner*, *supra*, test case opinion was filed, petitioners herein finally chose to agree to respondent's pending settlement offer, at which time the only available settlement position available to investors in the Elektra Hemisphere tax shelters was that which was accepted by petitioners and which was reflected in the decisions that were entered (namely, the no-cash settlements)

Petitioners' arguments and evidence fail to establish any "scheme of secrecy" regarding the availability of respondent's various settlement positions that were available to taxpayers who had invested in the Elektra Hemisphere tax shelters.

For the reasons stated, petitioners' motions for leave to file motions to vacate will be denied.

Appropriate orders will be issued.

APPENDIX E — EXTENDED CAPTION OF THIS CASE

Drake Oil Technology Partners, Frank E. Acierno, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Drake Oil Technology Partners, Frank E. Acierno, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Vanguard Oil Technology Partners, Drake Oil Technology Partners, Dillon Oil Technology Partners, Derringer Oil Technology Partners 1981, Derringer Oil Technology Partners 1982, Crown Oil Technology Partners, Carlton Oil Technology Partners, Ltd., Charles R. Mangum, Marilyn M. Mangum, James Ford Harvey, Martha B. Harvey, Steve Stroube, Elaine Stroube, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Robert F. Jacobsen, Marilyn B. Jacobsen, Bruce A. Forsberg, Linda Forsberg, Troy A. Athon, Dillon Oil Technology Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Robert F. Jacobsen, Marilyn B. Jacobsen, Bruce A. Forsberg, Linda Forsberg, Troy A. Athon, Dillon Oil Technology Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Tony W. Dial and Candace P. Dial, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Scott K. Monroe, Barbara F. Monroe, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Vulcan Oil Technology Partners, Vanguard Oil Technology Partners, Drake Oil Technology Partners, Dillon Oil Technology Partners, Derringer Oil Technology Partners 1981, Derringer Oil Technolgy Partners 1982, Crowne Oil Technology Partners, Carlton Oil Technology Partners, Ltd., American Energy Resources, Inc., Scott K. Monroe, Barbara F. Monroe, Raymond P. Meyer, Gretchen A. Meyer, William D. Ginn,

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Arlene D. Ginn, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Vanguard Oil Technology Partners, Dillon Oil Technology Partners, Carlton Oil Technology Partners, Ltd., Scott K. Monroe, Barbara F. Monroe, Raymond P. Meyer, Gretchen A. Meyer, William D. Ginn, Arlene D. Ginn, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. John C. Megna, Beverly J. Megna, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Carl Bossola, Rosemarie Bossola, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Carl Bossola, Rosemarie Bossola, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Michael L. Mintz, Laurie M. Mintz, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Carl S. Bossola, Rosemarie Bossola, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Jack Schoellerman, Katherine Schoellerman, Dillon Oil Tecnology Partners, Larry V. Gridley, Daila S. Gridley, Thomas L. Saliba, Betty R. Saliba, Samuel W. Peterson, B.L. Peterson, Gary G. Morikone, Dorothy Morikone, Crowne Oil Technology Partners, Donald H. Fritts, Drake Oil Technology Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Estate of James T. Campion, Deceased, Leona Campion, Executrix, Leona Campion, George M. Collins, Grace E. Collins, James Lotta, Lynne M. Lotta, Alden B. Chase, Earlene Chase, Thomas L. Saliba, Betty R. Saliba, Dwight V. Call, Christine G. Call, Michael Rafferty, Mary Lee Rafferty, Theodore L. Shebs, Rosemary L. Shebs, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Samuel W. Peterson, B.L. Peterson,

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Dillon Oil Technology Partners, Gary G. Morikone, Dorothy Morikone, Crowne Oil Technology Partners, Victor Hay-Roe, Lynn Hay-Roe, Drake Oil Technology Partners, Donald H. Fritts, Larry B. Gridley, Daila S. Gridley, Richard W. Hartmann, Remedios C. Hartmann, Thomas L. Saliba, Betty R. Saliba, Roy E. Hanson, Renee B. Hanson, Vanguard Oil Technology Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Gary G. Morikone, Dorothy Morikone, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Allen V. Bergh, Karen E. Bergh, Paul E. Johnson, Lois C. Johnson, Steve Loo, Gloria Loo, John C. Rienstra, Marchiene Rienstra, Edward J. Sapko, Virginia Sapko, Petitioners, and Vera Hudson, Raymond F. Meyer, Gretchen Meyer, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Jodh Arora, Venna Arora, Dillon Oil Technology Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Jodh Arora, Venna Arora, Dillon Oil Technolgy Partners, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Gerald N. Nicks, Floy Winona Nicks, N.H. Shannon, Petitioners-Appellants, and James H. Clement, Ida L. Clement, W. Richard Morgan, Janice J. Morgan, William P. Sandler, Joanne P. Sandler, Petitioners v. Commissioner of Internal Revenue, Respondent-Appellee. William T. Minter, Susan T. Minter, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Richard D. Paolillo, Dorothy L. Paolillo, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Richard D. Paolillo, Dorothy L. Paolillo, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Clay Wood,

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Marcia Wood, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Clay Wood, Marcia Wood, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. George L. Thompson, Omayma Thompson, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Clemens R. Fromlath, Helene Fromlath, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Clemens R. Fromolath, Helene Fromlath, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Richard D. Paolillo, Dorothy L. Paolillo, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Eileen Zimmerman, William R. Zimmerman, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Gary G. Morikone, Dorothy Morikone, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Gary G. Morikone, Dorothy Morikone, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee. Gary G. Morikone, Dorothy Morikone, Petitioners-Appellants v. Commissioner of Internal Revenue, Respondent-Appellee, and all other partners, Respondents.

U.S. Court of Appeals, 10th Circuit; 98-9025, 98-9026, 98-9028, 98-9029, 98-9030, 98-9031, 98-9032, 98-9033, 98-9034, 98-9036, 98-9038, 98-9039, 98-9040, 98-9041, 98-9042, 98-9043, 98-9044, 98-9045, 98-9046, 99-9000, 99-9001, 99-9003, 99-9004, 99-9005, 99-9006, 99-9007, 99-9008, 99-9009, 99-9010, 99-9011, 99-9013, 99-9014, 99-9023, 99-9024, 99-9025.